

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Improving Public Safety)	
Communications in the)	
800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 900 MHz)	
Industrial/Land Transportation)	
and Business Pool Channels)	
)	
Wireless Telecommunications Bureau)	
Seeks Comment on “Supplemental)	DA 03-19
Comments of the Consensus Parties”)	
Filed in the 800 MHz Public Safety)	
Interference Proceeding)	

TO: The Commission

SUPPLEMENTAL REPLY COMMENTS OF CONSUMERS ENERGY COMPANY

By: Shirley S. Fujimoto
Kirk S. Burgee
Paul E. Malmud
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

Attorneys for Consumers Energy Company

Dated: February 25, 2003

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EXECUTIVE SUMMARY

As reflected in the comments submitted in this proceeding, a majority of commenters oppose the Consensus Plan because it is unlikely to resolve the interference problems in the 800 MHz band and could actually aggravate the situation. In particular, the comments demonstrate that the realignment plan for the Border Region is inappropriate.

Commenters agreed with Consumers Energy Company (“Consumers”) that the Consensus Plan fails to adequately address interference problems throughout the Border Regions and could subject licensees to either less interference protection or no protection at all. Also, Border Region licensees overwhelmingly criticized the Consensus Plan because it manipulates the channel allocations in the Border Regions in order to enrich Nextel’s spectrum position. In comparison, Public Safety licensees lose spectrum or are provided with at most five additional channels despite the fact that one of the stated purposes of the Consensus Plan is to provide Public Safety licensees with additional spectrum.

Commenters also widely oppose the Consensus Plan’s Guard Band proposal because it would seriously undermine the integrity of their operations. The required receiver and signal strength thresholds that are proposed ensure that licensees that utilize Guard Band spectrum will, at a minimum, have their interference protection reduced substantially or possibly eliminated completely. To rectify the situation, licensees may have to buy new receivers or build more than two times the number of base stations that they have already constructed.

Because the interference protection will be diminished in the Guard Band, commenters found that the Guard Band is not comparable to the spectrum that licensees will vacate. If a Guard Band is necessary, a number of commenters support Consumers's suggestion to locate it in the lowest 2 MHz band of spectrum in the cellular band because it places the onus of resolving the interference problems on Nextel, the primary cause of Public Safety interference, instead of on licensees that are operating in a non-interfering manner.

Consumers has proposed a viable and much more reasonable alternative to rebanding as a solution to the interference. Specifically, Consumers proposed rules that would require cellular providers to take responsibility for their operations by conducting analysis in advance of coordination. Additionally, Consumers has proposed well defined fault-based procedures for interference resolution that do not suffer from the deficiencies of the Consensus Plan. A variety of commenters support the ideas underlying the proposal as an alternative to rebanding.

The comments also indicate that if the Commission determines that realignment is necessary, Consumers's transition procedures would be supported by commenters because: (1) the relocation costs are guaranteed to all licensees; (2) no licensing freeze is imposed; (3) licensees can operate in the Guard Band; and (4) the relocation process is not run by biased parties. This is an equitable approach that would protect the rights of all licensees if rebanding is found to be warranted.

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SUPPLEMENTAL REPLY COMMENTS OF CONSUMERS ENERGY COMPANY

Consumers Energy Company (“Consumers”) by and through its undersigned counsel, hereby files these supplemental reply comments in the above referenced proceeding.¹ In this proceeding, the Federal Communications Commission (“Commission or “FCC”) issued a Public Notice requesting reply comments on the supplemental filing of the Consensus Parties.²

¹ *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 4873 (2002).

² *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on “Supplemental Comments of the Consensus Parties” Filed in the 800 MHz Public Safety Interference Proceeding, DA 03-19 (January 3, 2003).

Consumers, along with the majority of commenters, is urging the Commission to reject the Consensus Plan because it is unlikely to resolve the interference problems in the 800 MHz band and could actually aggravate the situation. Furthermore, there are technical and other measures available that will work to alleviate interference short of rebanding. If the Commission determines that it is necessary to realign the 800 MHz band, the Consensus Plan is not the appropriate method to accomplish this goal. Instead, the Commission should utilize the more objective rules and licensing conditions that Consumers proposed in its comments.

I. THE COMMENTS REFLECT SIGNIFICANT OPPOSITION TO THE CONSENSUS PLAN FROM ALL TYPES OF 800 MHZ LICENSEES

The comments that were submitted in response to the Consensus Parties' supplemental filing show that there is widespread opposition to the Consensus Plan among all types of 800 MHz licensees, including those licensed in the Public Safety,³ Business,⁴ I/LT,⁵ and SMR⁶ Radio Services. These comments are based on the recognition that, particularly in its latest form, the Consensus Plan is deeply flawed. Because the Consensus Plan lacks a firm provision for fully funding the proposed relocation, a partial rebanding is possible on a national scale, causing a worse interference environment, and greater difficulty with interoperability, than Public Safety

³ See e.g. Comments of City of Baltimore, Maryland, WT Docket No. 02-55 (February 10, 2003); Comments of Public Safety Improvement Coalition, WT Docket No. 02-55 (February 10, 2003).

⁴ See e.g. Comments of Boeing Company, WT Docket No. 02-55 (February 10, 2003) ("*Boeing Comments*").

⁵ See e.g. Comments of American Electric Power Company, Inc., WT Docket No. 02-55 (February 10, 2003) ("*AEP Comments*").

⁶ See e.g. Supplemental Comments of Southern LINC, WT Docket No. 02-55 (February 10, 2003).

and other licensees face currently.⁷ Furthermore, the Consensus Plan continues to seek to materially undermine the rights of private land mobile licensees by imposing unattainable or extraordinarily costly performance standards on them.⁸ Remarkably, these standards would, for the first time, establish a regulatory environment at 800 MHz in which interference to another party's operations would be a completely legitimate occurrence. The FCC cannot adopt an approach that could allow this result.

Although Consumers and other parties opposed to the Consensus Plan recognize the importance of resolving the Public Safety interference problems, commenters are rightly concerned that if the Consensus Plan is implemented, Public Safety licensees could be subject to an even worse situation. The Commission must adopt an approach, such as is contemplated in Consumers's proposals, which will actually improve the situation and does not trample on the rights of licensees in doing so.

II. THE COMMENTS OF BORDER REGION LICENSEES DEMONSTRATE THAT THE REALIGNMENT PLAN FOR THE BORDER REGION IS INAPPROPRIATE

Commenters with Border Region spectrum interests, including Public Safety Radio Service licensees, find the Consensus Plan's Border Region measures to be unacceptable. The Consensus Plan fails to protect Border Region licensees adequately from interference, improperly reduces their spectrum allocations, and fails to provide adequately for reimbursement

⁷ Comments of Michigan Department of Information Technology, WT Docket No. 02-55 at 3 (February 10, 2003) ("*Michigan Comments*").

⁸ Comments of Motorola, Inc., WT Docket No. 02-55 at 9-14 (February 10, 2003) ("*Motorola Comments*"); Comments of Consolidated Edison Company of New York, Inc., WT Docket No. 02-55 at 5-7 (February 10, 2003) ("*Con Edison Comments*").

of the cost of relocating facilities in the Border Regions, which will be even higher than the considerable costs associated with non-Border Regions.

A. Licensees In The Border Regions Must Be Protected From Interference

Commenters agree with Consumers that the Consensus Plan fails to address interference problems adequately throughout the Border Regions. Specifically, commenters note that the Consensus Plan, as currently written, either subjects licensees to lesser standards than similarly situated licensees receive, or may not provide any interference protection at all. For example, The City and County of San Diego express concern that Public Safety licensees in the Mexican Border Region are provided with less interference protection than Public Safety licensees elsewhere.⁹ It appears that the regulations were written without considering the fact that Public Safety licensees in the Mexican Border Region would be operating on higher frequencies than other Public Safety licensees.

In this regard, the Consensus Plan did not account for the fact that many Business and I/LT licensees will be operating above 861 MHz in the Border Regions. As a result, these systems would effectively be treated like cellular operations under the Consensus Plan's proposed regulations, regardless of their architecture. Consumers and other commenters are concerned that the proposed interference mitigation provisions will not even apply to their operations because the interference protections are designed to protect non-cellular operations.¹⁰

Not only are the interference regulations deficient in the Border Region, but the comments demonstrate that the Consensus Parties failed to consider specific interference

⁹ Comments of City and County of San Diego, WT Docket No. 02-55 at 8 (February 10, 2003).

¹⁰ See e.g. *Boeing Comments* at 13 n. 27.

problems that would occur only in the Border Region as a result of Business and I/LT licensees operating above 861 MHz. When Business and I/LT licensees are operating above 861 MHz, they will often be in close proximity and *co-channel* to Nextel. Commenters rightly point out that this could subject Business and I/LT licensees to “extreme amounts of interference.”¹¹ If the interference occurs, however, licensees would be “without adequate recourse” because the proposed regulations do not appear to offer protection to licensees from Nextel’s interference above 861 MHz.¹²

The Commission must ensure that any new regulations provide sufficient interference protection for Border Region licensees from Nextel’s co-channel interference. In particular, it must be made clear that there is an absolute obligation to rectify interference to licensees, without regard to their operational parameters.

B. Additional Spectrum Should Not Be Reallocated To Nextel

In its supplemental comments, Consumers also noted that one of the reasons why the realignment plan for the Border Regions is inappropriate is that Business and I/LT frequencies “will be permanently *reallocated* from Business and I/LT licensees to Nextel.”¹³ Commenters overwhelmingly agreed with Consumers, and criticized the Consensus Plan because it would manipulate the channel allocations in the border areas.¹⁴ Instead of trying to design a fair and

¹¹ Comments of Border Area Coalition, WT Docket No. 02-55 at 11 (February 10, 2003) (“*Border Area Coalition Comments*”).

¹² *Id.*

¹³ Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55 at 11 (February 10, 2003) (“*Consumers Supplemental Comments*”).

¹⁴ See e.g. *Border Area Coalition Comments* at 6-8.

impartial realignment plan for the Border Region, the primary effect is “enriching Nextel’s spectrum position.”¹⁵

The Border Area Coalition conducted case studies of three different Border Regions to determine the effect that the Consensus Plan would have on the licensees in their respective Border Region. In each case, Nextel would be permanently reallocated a significant number of additional channels. For example, in the Mexican Border Region, Nextel is allocated 163 channels for its commercial operations.¹⁶ In the Canadian Border Region SMR licensees (*i.e.* Nextel) are provided over 40 additional channels in both Region 3 and Region 5.¹⁷ In comparison, *Public Safety licensees lose spectrum* or are provided with at most 5 additional channels despite the fact that one of the stated purposes of the Consensus Plan is to provide Public Safety licensees with additional spectrum. This is not an acceptable outcome. Nextel is already seeking 10 MHz of additional spectrum as part of this proceeding and there is no justification for further depleting Business and I/LT allocations to benefit Nextel.

The comments show that the Border Plan inequitably reallocates spectrum to Nextel and should therefore not be adopted. Consumers urges the Commission to maintain the current service allocations in the Border Regions.

C. Border Region Licensees Must Be Reimbursed For All Costs Associated With Realigning The Border Region

Commenters also note that licensees operating in the Border Regions are likely to incur additional costs that may not be borne by licensees in other areas. One reason for this is that the

¹⁵ *AEP Comments* at 16.

¹⁶ *Border Area Coalition Comments* at Exhibit A p. 3.

¹⁷ *Id.* at Exhibits C and D.

Consensus Plan greatly reduces the separation between the highest and lowest frequency for Business and I/LT licensees in the Border Regions. As a result, many licensees in the Border Regions will incur additional costs to maintain their communications systems' performance. Specifically, in addition to system upgrades required by the increased interference protections, licensees will have to upgrade their transmitters' power levels or build additional sites.¹⁸ Boeing states that because it will not be able to maintain the manufacturer's recommended channel spacing, it will need to purchase "extensive amounts of new equipment" and possibly build additional sites so that its communications system is not detrimentally affected by the reduced channel spacing.¹⁹

In the event of rebanding in the Border Regions, Consumers and other commenters urge the Commission to require Nextel to reimburse licensees for all their relocation costs. This should include *all* costs that are reasonably incurred in order to maintain the same level of performance from their communications systems. Otherwise, licensees, and especially licensees that operate in the Border Region, will be forced to bear the cost of Nextel's interference despite the fact that they complying with the FCC's regulations and operating on a non-interfering basis.

III. LICENSEES WILL NOT BE ABLE TO OPERATE IN THE GUARD BAND

In the supplemental comments, the Consensus Parties proposed that licensees in the Guard Band must comply with certain receiver and signal strength requirements, which are more stringent than in the remainder of the 800 MHz band, in order to be protected from interference. As set forth in the comments, licensees could lose most, or even all, of their interference

¹⁸ See e.g. Comments of Snohomish County Emergency Radio System, WT Docket No. 02-55 at 5 (February 10, 2003).

protection if the standards are imposed. As a result, licensees forced to operate in the Guard Band will not receive comparable facilities. As an alternative, commenters propose that the Guard Band, if it is necessary, should be located in the 861-863 MHz band in the non-Border Regions.

A. The Interference Standards Do Not Protect Licensees In The Guard Band

In its supplemental comments, Consumers pointed out that the amount of interference protection that is provided to Business and I/LT licensees that are relocated to, or remain in, the Guard Band will be reduced substantially or even eliminated because licensees may not be able to meet either the receiver or signal strength standards.²⁰ The comments that were submitted clearly support this proposition.

For example, Consolidated Edison Company of New York (“Con Edison”) notes that it might not receive any interference protection at all. The Class A receiver specifications are not applicable to Con Edison’s system because the channel access method and modulation techniques used in its receivers are different from the Class A standards. As a result, Con Edison would have to replace all of its receivers at a cost of at least \$6.6 million to receive interference protection.²¹

Motorola, which built and sold much of the 800 MHz equipment, states that by requiring licensees to meet the Class A specifications, the Consensus Parties are merely limiting the design options for receivers “to a narrow specification framework” and are unnecessarily restricting the

¹⁹ *Boeing Comments* at 9.

²⁰ *Consumers Supplemental Comments* at 12-14.

²¹ *Con Edison Comments* at 5-6.

ability of licensees to use certain equipment.²² The only party that benefits from the receiver standards is Nextel because it would be able to interfere with licensees that do not use Class A receivers with impunity.

Similarly, licensees will not be fully protected from interference because of the signal strength requirements in the Guard Band. Ameren calculated that if it is relocated into the Guard Band it could reduce “the interference protected operational coverage area . . . by approximately 75 percent.”²³ The United Telecom Council and the Edison Electric Institute concur and state that the average base station will lose 70-75 percent of its usable coverage area.²⁴

When it is possible to meet the signal strength requirements, the comments demonstrate that licensees would incur a tremendous cost. For example, Motorola calculated that a licensee operating a 10 site system might need to expand to 33 sites just to achieve a -95 dBm signal level throughout its existing coverage area.²⁵ Because the signal strength requirement is much greater in the Guard Band, even more sites would be necessary, requiring extraordinary expenditures for Guard Band licensees, none of which are accounted for in the Consensus Plan.

As Consumers pointed out in its previous comments, it is astonishing that such draconian conditions would be needed *in addition to a completed band restructuring*. In their comments, ALLTEL Communications, AT&T Wireless Services, Cingular Wireless, Sprint Corporation, Southern LINC, and United States Cellular Corporation make this same observation and question

²² *Motorola Comments* at 18.

²³ Comments of Ameren Corporation, WT Docket No. 02-55 at 9 (February 10, 2003) (“*Ameren Comments*”).

²⁴ Comments of United Telecom Council and Edison Electric Institute, WT Docket No. 02-55 at 12 (February 10, 2003) (“*UTC and EEI Comments*”).

²⁵ *Motorola Comments* at 11.

the net benefits of rebanding.²⁶ The Consensus Plan’s approach to interference can be compared to a crime reduction program that places conditions on a victim’s right to complain of a crime. To be sure, such a program would reduce statistical crime rates, but the public would not be well-served in the process.

B. The Comments Show That The Guard Band Spectrum Is Not Comparable

As discussed above, the comments clearly demonstrate that the Guard Band will be “utterly useless to almost all licensees unfortunate enough to [remain or] be relocated there.”²⁷ These licensees will not receive the same level of interference protection as is currently provided under the FCC’s rules. As a result, licensees that are relocated to, or remain in, the Guard Band will not receive “comparable facilities” because the quality of service, which is defined under Section 90.699(d)(3) of the FCC’s rules as “the same level of interference protection on the new system as on the old system,”²⁸ will be greatly reduced.²⁹

The Consensus Parties even recognize that the quality of service in the Guard Band will be compromised (*i.e.* less interference protection). Nextel specifically stated that only “communications systems that can best tolerate some interference” should utilize the Guard Band.³⁰ As Carolina Power and Light Company and TXU Business Services note, rather than

²⁶ Comments of ALLTEL Communications Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Sprint Corporation, Southern LINC, and United States Cellular Corporation, WT Docket No. 02-55 at 3-5 (February 10, 2003) (“*Cingular et. al. Comments*”).

²⁷ Comments of Palomar Communications, Inc., WT Docket No. 02-55 at 9 (February 10, 2003).

²⁸ 47 C.F.R. § 90.699(d)(3).

²⁹ Comments of National Association of Manufacturers and MRFAC, Inc., WT Docket No. 02-55 at 10-11 (February 10, 2003).

³⁰ Reply Comments of Nextel Communications Inc., WT Docket No. 02-55 at App. II p. 4 (August 7, 2002).

making Nextel “fix the interference problems that it has created, the Rebanding Proposal would shift the burden to [licensees that] . . . would be locked into a Guard Band and forced to accept higher levels of interference.”³¹ Consumers submits that the Commission should not adopt any realignment plan that does not provide all licensees with comparable facilities and fully protect them from interference.

C. If A Guard Band Is Necessary, It Should Be Located In The Cellular Band

Consumers previously proposed that if a Guard Band is necessary it should be established in the lowest 2 MHz band of spectrum in the cellular band.³² Commenters support this approach because the onus of resolving the interference problems should be placed on Nextel instead of licensees that are operating in a non-interfering manner.³³ Cinergy Corporation concurs, and believes that “it is entirely inequitable for Nextel to be given the right to interfere with licensees” when it is the cause of the problem.³⁴ Baltimore Gas and Electric Company also believes that the Guard Band should be located in the cellular portion of the 800 MHz band.³⁵

³¹ Comments of Carolina Power and Light Company and TXU Business Services, WT Docket No. 02-55 at 2 (February 10, 2003).

³² *Consumers Supplemental Comments* at 15.

³³ *See e.g. Border Area Coalition Comments* at 10.

³⁴ Supplemental Comments of Cinergy Corporation, WT Docket No. 02-55 at 11 (February 10, 2003).

³⁵ Comments of Baltimore Gas and Electric Company, WT Docket No. 02-55 at 1-2 (February 10, 2003).

This is the appropriate solution because “the record reflects virtual unanimity that Nextel is the predominant causer of interference to public safety.”³⁶ As the cause of the interference, Nextel should be required to bear any burdens that are necessary to resolve it.

IV. CONSUMERS’S PROPOSED REGULATIONS OFFER A SOUND AND EFFECTIVE RESOLUTION TO PUBLIC SAFETY INTERFERENCE

The Commission needs to adopt a realistic plan that will alleviate interference now instead of waiting years for a realignment plan to be completed. Consumers’s proposal for interference reduction does not suffer from many of the problems that commenters identified with the Consensus Plan.

A. Licensees Could Address Interference Problems Quickly And Expeditiously

A primary reason that commenters are dissatisfied with the Consensus Plan is that it will take years to resolve the interference problems and there are no assurances that it will be implemented in a substantial part of the country. The City of Philadelphia states that licensees that are causing interference “should be required to take significant steps to mitigate interference now.”³⁷ It is not enough to try to resolve the interference problems in the distant future while communications systems are currently at risk.

Consumers’s proposal, which is modeled on the Consensus Plan’s *post-realignment* procedures for reducing interference, would address interference problems without regard to location in days rather than years. Specifically, if a licensee is experiencing interference, it

³⁶ *Cingular et. al. Comments* at 5.

³⁷ Comments of City of Philadelphia, WT Docket No. 02-55 at 8 (February 10, 2003) (“*Philadelphia Comments*”).

would serve written notice of the interference on all low-site digital licensees. Within two days, all low-site digital licensees must respond to the complaint and state whether or not they are operating facilities within 5,000 feet of where the interference is experienced.³⁸ Within five business days thereafter, an on-site analysis would take place with licensees that are operating within 5,000 feet to determine the source of the interference. Once the source of the interference has been identified, the interferor would then be required to take corrective action.³⁹ Under Consumers's proposal, the cause of the interference would be known and corrective steps could commence in less than ten days. Instead of waiting years and gambling that the Consensus Plan's realignment proposal will be effective, interference problems could be resolved quickly and expeditiously if the Commission adopts Consumers's proposal.

B. Measures Designed To Prevent Interference On A Proactive Basis Are Fundamental To Consumers's Proposal

As set forth in Consumers's Appendix A, licensees of digital systems must perform an engineering analysis in advance of installing a site that shows the site will not cause interference to other licensees.⁴⁰ Additionally, once mitigation measures have been undertaken at a site in response to a complaint, the digital system licensee may not make further changes without consulting with other interfering contributors, if any, and the original interference complainant.⁴¹ By requiring an advance evaluation or consultation, these provisions will help to ensure that interference does not arise in the first place.

³⁸ *Consumers Supplemental Comments* at App. A-2 to A-3.

³⁹ *Id.* at App. A-3.

⁴⁰ *Id.* at App. A-1 to A-2.

⁴¹ *Id.* at App. A-4.

C. The Relocation Process Is Simplified

Another complaint about the Consensus Plan is that the relocation process is extremely complicated. There are so many interdependent components that if one part fails, the entire process will collapse. As discussed below, Consumers submitted proposed rules and licensing conditions that illustrate how a rebanding proposal could be implemented to realign the 800 MHz band.⁴² Consumers's proposal would simplify the relocation process, if one is deemed necessary, and addresses the commenters concerns about funding, the licensing freeze, the Guard Band, and dispute resolution.

1. Payment is Guaranteed To All Licensees

Many commenters express concern that Nextel's voluntary contribution of \$850 million will be insufficient to meet all the relocation costs.⁴³ If the funding is inadequate, the 800 MHz band "would be left in worse shape than before" the realignment process began.⁴⁴ To ensure that this does not occur, Consumers's proposal provides that "Nextel shall place in an irrevocable escrow account sufficient funds to cover the projected relocation costs."⁴⁵ If the original estimate is insufficient, the Commission can authorize adjustments to the escrow account.⁴⁶ Once the realignment process commences, Consumers's proposal provides additional protection to prevent the process from coming to a grinding halt.

⁴² *Id.* at App. B.

⁴³ See e.g. Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, WT Docket No. 02-55 at 3 (February 10, 2003).

⁴⁴ *UTC and EEI Comments* at 8.

⁴⁵ *Consumers Supplemental Comments* at App. B-2.

⁴⁶ *Id.*

2. No Licensing Freeze Is Imposed

The Consensus Plan also proposes to impose a licensing freeze in the 800 MHz band in order to realign the 800 MHz band. Consumers and numerous other commenters oppose the licensing freeze because it is unnecessary.⁴⁷ As Motorola notes, it is unlikely that there is enough white space in the 800 MHz band to support any new systems so the practical effect of the freeze will be to limit the ability of licensees to modify their communication systems.⁴⁸

Consumers's proposes a much simpler way to realign the 800 MHz band. Under its plan, Nextel is required to relocate all incumbent licensees in the 851-854 MHz band to equivalent spectrum in the 854-861 MHz band.⁴⁹

3. Licensees Can Operate In The Guard Band

As discussed above, many commenters are concerned that under the Consensus Plan the interference protection that is provided to licensees in the Guard Band is inadequate and they will not be able to utilize their communications systems throughout their service areas. As a result, the Consensus Plan does not provide these licensees with comparable facilities. To address these concerns, Consumers's proposes that licensees in the Guard band should be given the same level of interference protection as licensees in the 851-859 MHz band.⁵⁰ This will ensure that all licensees in the non-cellular band are protected from interference and that no one's rights are sacrificed.

⁴⁷ See e.g. *Ameren Comments* at 11.

⁴⁸ *Motorola Comments* at 5-6.

⁴⁹ *Consumers Supplemental Comments* at App. B-1 to B-2.

⁵⁰ *Id.* at App. B-2.

4. The Relocation Process Is Not Run By Biased Parties

Another common concern of many commenters is that the Consensus Plan provides for Nextel and members of the Land Mobile Communications Council to oversee the realignment plan. Instead of having an impartial observer resolving any disputes, the Relocation Coordination Committee (RCC) “represents a conflict of interest and an unfair advantage for some parties.”⁵¹ Consumers agrees with the City of Philadelphia that the members of the RCC “have their own legitimate commercial interests in the realignment.”⁵² As a result, the RCC will not necessarily act in the best interests of *all* licensees.⁵³

Consumers proposes that instead of establishing the RCC, the Commission should decide any disputed matters. This would insure that the decision-maker is not influenced by outside concerns, like frequency coordination fees or grant money.⁵⁴

V. CONCLUSION

The comments in this proceeding reveal that, as supplemented, the Consensus Plan continues to represent a potentially damaging approach to the problem of Public Safety interference. While the Consensus Parties claim that relocation is necessary to remedy interference, they cannot assure that any minimal level of relocation will take place and have now laid out a variety of measures in addition to relocation that will require even greater expenditure by rule-compliant licensee bystanders. This approach cannot serve as the model for

⁵¹ Comments of Alliant Energy Corporation, WT Docket No. 02-55 at 2 (February 10, 2003).

⁵² *Philadelphia Comments* at 6.

⁵³ *AEP Comments* at 12-14.

⁵⁴ Supplemental Comments of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 at 18-19 (February 10, 2003).

resolving interference. Instead, the FCC must adopt an equitable approach to interference resolution and, if it is found to be necessary, rebanding. Consumers has offered a proposed format that it asks the FCC to adopt as a sensible solution to interference.

WHEREFORE, THE PREMISES CONSIDERED, Consumers respectfully requests that the Commission consider these supplemental reply comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

By: /s/ Shirley S. Fujimoto

Shirley S. Fujimoto
Kirk S. Burgee
Paul E. Malmud
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

Attorneys for Consumers Energy Company

Dated: February 25, 2003

CERTIFICATE OF SERVICE

I, Christine Biso, do hereby certify that on this 25th day of February 2003, I caused a copy of the foregoing "Supplemental Reply Comments of Consumers Energy Company" to be hand-delivered to each of the following:

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Emily Willeford
Commissioner Kevin J. Martin's Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Bryan Tramont
Chairman Michael K. Powell's Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Paul Margie
Commissioner Michael J. Copps' Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Barry Ohlson
Commissioner Jonathan S. Adelstein's
Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Marsha J. MacBride
Chairman Michael K. Powell's Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Samuel Feder
Commissioner Kevin J. Martin's Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jennifer Manner
Commissioner Kathleen Q. Abernathy's
Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kathleen O'Brien-Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Catherine W. Seidel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

David Furth
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Shellie Blakeney
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

D'wana R. Terry
Wireless Telecommunications Bureau Federal
Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Thomas P. Stanley
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michael Wilhelm
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Karen Franklin
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Julius P. Knapp
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ed Thomas, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Bruce A. Franca
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Alan Scrim
Office of Engineering and Technology Federal
Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

BY: /s/ Christine Biso
Christine Biso